

Indiana Rules of Court Rules of Criminal Procedure

Effective January 1, 1999

Including Amendments Received Through December 2001

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Rule 1. Statutory rules adopted

Chapter 185, Acts of 1937, has heretofore been abrogated[1]. All other rules of procedure and practice applicable to trial courts adopted by statutory enactment and in effect on January 1, 1970, including the statutes attempted to be repealed by Chapter 185, Acts of 1937, shall continue in full force and effect, except as otherwise provided by the rules of this court.

[1] Repealed by acts 1963, c.29, s.5, "as superseded by rules of the Supreme Court."

Rule 2. Subpoena duces tecum

A subpoena may command the person to whom it is directed to produce the books, documents, or tangible things designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may:

- (1) quash or modify the subpoena if it is unreasonable and oppressive;
- (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable costs of producing the books, papers, documents, or tangible things; or
- (3) quash a Grand-Jury subpoena on the ground of privilege against self-incrimination on the motion of a Grand Jury Target Witness.

Amended Nov. 4, 1985, effective Jan. 1, 1986.

Rule 2.1. Appearance

(A) **State of Indiana.** At the time a criminal proceeding is commenced, the prosecuting attorney for the county where the action is pending shall file an appearance form setting forth the following information:

- (1) The name, address, attorney number, telephone number, FAX number, and computer address of the prosecuting attorney representing the State of Indiana, as applicable;
- (2) The case type of the proceeding [Administrative Rule 8(B)(3)];
- (3) A statement that the State will or will not accept service by FAX;
- (4) The number of any arrest report relating to the factual basis underlying the criminal proceeding; and
- (5) Such additional matters specified by state or local rule required to maintain the information management system employed by the court.

(B) **Defendant.** At the time an attorney for the defendant first appears in the criminal case, the defense attorney shall file an appearance form setting forth the following information:

- (1) The name, address, attorney number, telephone number, FAX number, and computer address of the attorney representing the defendant;
- (2) The case number assigned to the criminal proceeding;
- (3) A statement that the defense attorney will or will not accept service in this case by FAX; and
- (4) Such additional matters specified by state or local rule required to maintain the information management system employed by the court.

(C) **Defendant-Pro Se.** In the event a defendant decides to represent himself or herself in a criminal proceeding without assistance of counsel, the defendant shall file an appearance form setting forth the identifying information required in subsection (B), as applicable.

(D) **Completion and Correction of Information.** In the event matters must be filed before the information required by this rule is available, the appearance form shall be submitted with available information and supplemented when the absent information is acquired. Attorneys shall promptly advise the clerk of the court of any change in the information previously supplied to the court on the appearance form.

(E) **Forms.** The Division of State Court Administration shall prepare and publish a standard format for compliance with the provisions of this rule.

Adopted Dec. 5, 1994, effective Feb. 1, 1995.

Rule 2.2. Assignment of cases

The courts of record in each county shall adopt for approval by the Indiana Supreme Court a local rule by which all felony and misdemeanor cases shall be assigned to each court in the county at the time of filing. Should a county fail to adopt such plan, the Supreme Court shall prescribe a plan for use by the county. The local rule shall include:

- (A) provision for non-discretionary assignment of all felony and misdemeanor cases filed in the county to one or more of the courts and judges with such jurisdiction;
- (B) to the extent practical under this mandate for non-discretionary assignment in criminal cases, consideration of the workload of each court in other areas;
- (C) provision for the continued assignment of a judge in the event of dismissal; and
- (D) pursuant to Ind.Crim.Rule 13(C), provision for the reassignment of the case in the event a change of judge is granted under Ind.Crim.Rule 12 or an order of disqualification or recusal is entered in the case.

Adopted Dec. 5, 1994, effective Feb. 1, 1995; amended effective July 6, 1995.

Rule 2.3 Transfer of Cases

- (A) **Transfer of Cases from City and Town Courts.** In all counties where there are circuit, superior, county or juvenile courts, and where there also exist in the same county a city or town court, the judge of the city or town court may, with the consent of the judge of such circuit, superior, county or juvenile court, transfer to the circuit, superior, county or juvenile court any cause of action filed and docketed in such city or town court. Transfer may occur by transferring to the receiving court all original pleadings and documents and bail bonds filed in such cause of action. The cause of action shall be redocketed in the receiving court and disposed as if originally filed with the receiving court, provided that the receiving court has jurisdiction over the matter.
- (B) **Transfer of Cases to City and Town Courts.** The judge of a circuit, superior, county or juvenile court may, with the consent of the judge of a city or town court within the county, transfer to such city or town court any cause of action filed and docketed in the circuit, superior, county or juvenile court, provided that the receiving court has jurisdiction over the matter. Transfer may occur by transferring to the receiving court all original pleadings and documents and bail bonds filed in such cause of action. The cause of action shall be redocketed in the receiving court and disposed as if originally filed with the receiving court.

Adopted Dec. 15, 1995, effective Feb. 1, 1996.

Rule 3. Memorandum to be filed with motion to dismiss

Motion to Dismiss - Memorandum. In all cases where a motion is made to dismiss an indictment or affidavit, a memorandum shall be filed therewith stating specifically the grounds for dismissal. A motion to dismiss shall be based upon such grounds as are provided by law, whether statutory or other legal grounds. A defendant who is in a position adequately to raise more than one (1) ground in support of the motion to dismiss shall raise every ground upon which he intends to challenge the indictment or information. A subsequent motion based upon a ground not properly raised, although available, in the original motion to dismiss may be summarily denied. The court, however, in the interest of justice and for good cause shown, may entertain and dispose of such a motion on the merits. A motion to dismiss based upon lack of jurisdiction over the subject matter may be made at any time.

Amended June 8, 1971; amended Nov. 4, 1985, effective Jan. 1, 1986.

Rule 4. Discharge for delay in criminal trials

(A) **Defendant in Jail.** No defendant shall be detained in jail on a charge, without a trial, for a period in aggregate embracing more than six (6) months from the date the criminal charge against such defendant is filed, or from the date of his arrest on such charge (whichever is later); except where a continuance was had on his motion, or the delay was caused by his act, or where there was not sufficient time to try him during such period because of congestion of the court calendar; provided, however, that in the last-mentioned circumstance, the prosecuting attorney shall make such statement in a motion for continuance not later than ten (10) days prior to the date set for trial, or if such motion is filed less than ten (10) days prior to trial, the prosecuting attorney shall show additionally that the delay in filing the motion was not the fault of the prosecutor. Provided further, that a trial court may take note of congestion or an emergency without the necessity of a motion, and upon so finding may order a continuance. Any continuance granted due to a congested calendar or emergency shall be reduced to an order, which order shall also set the case for trial within a reasonable time. Any defendant so detained shall be released on his own recognizance at the conclusion of the six-month period aforesaid and may be held to answer a criminal charge against him within the limitations provided for in subsection (C) of this rule.

(B) Defendant in Jail - Motion for Early Trial.

- (1) If any defendant held in jail on an indictment or an affidavit shall move for an early trial, he shall be discharged if not brought to trial within seventy (70) calendar days from the date of such motion, except where a continuance within said period is had on his motion, or the delay is otherwise caused by his act, or where there was not sufficient time to try him during such seventy (70) calendar days because of the congestion of the court calendar. Provided, however, that in the last-mentioned circumstance, the prosecuting attorney shall file a timely motion for continuance as set forth in subdivision (A) of this rule. Provided further that a trial court may take note of congestion or an emergency without the necessity of a motion, and upon so finding may order a continuance. Any continuance granted due to a congested calendar or emergency shall be reduced to an order, which order shall also set the case for trial within a reasonable time.
- (2) In computing the time comprising the seventy (70) calendar days under this Criminal Rule 4(B), each and every day after the filing of such motion for early trial shall be counted, including every Saturday, every Sunday, and every holiday excepting only, that if the seventieth (70th) day should fall upon a Saturday, a Sunday, or a holiday, then such trial may be commenced on the next day thereafter, which is not a Saturday, Sunday, or legal holiday.
- (3) The amendment to this Criminal Rule 4(B) shall be effective as to each and every motion for early trial filed on and after June 4, 1974.

(C) **Defendant Discharged.** No person shall be held on recognizance or otherwise to answer a criminal charge for a period in aggregate embracing more than one year from the date the criminal charge against such defendant is filed, or from the date of his arrest on such charge, whichever is later; except where a continuance was had on his motion, or the delay was caused by his act, or where there was not sufficient time to try him during such period because of congestion of the court calendar; provided, however, that in the last-mentioned circumstance, the prosecuting attorney shall file a timely motion for continuance as under subdivision (A) of this rule. Provided further, that a trial court may take note of congestion or an emergency without the necessity of a motion, and upon so finding may order a continuance. Any continuance granted due to a congested calendar or emergency shall be reduced to an order, which order shall also set the case for trial within a reasonable time. Any defendant so held shall, on motion, be discharged.

(D) **Discharge for delay in trial - When may be refused - Extensions of time.** If when application is made for discharge of a defendant under this rule, the court be satisfied that

there is evidence for the state, which cannot then be had, that reasonable effort has been made to procure the same and there is just ground to believe that such evidence can be had within ninety (90) days, the cause may be continued, and the prisoner remanded or admitted to bail; and if he be not brought to trial by the state within such additional ninety (90) days, he shall then be discharged.

(E) **Expiration of time.** When any time period established by the rule shall expire on a holiday or during vacation, the time so established shall be extended until the close of the next day when court is in session. This rule supersedes in part Burns' Stat., §§ 9-1402-9-1404 (Repl. 1956).[IC 35-1-26-2, 35-1-27-1 [repealed], 35-1-27-2 [repealed]].

(F) **Time periods extended.** When a continuance is had on motion of the defendant, or delay in trial is caused by his act, any time limitation contained in this rule shall be extended by the amount of the resulting period of such delay caused thereby. However, if the defendant causes any such delay during the last thirty (30) days of any period of time set by operation of this rule, the State may petition the trial court for an extension of such period for an additional thirty (30) days.

(G) **Application.** This rule shall apply to all trial courts having criminal jurisdiction in the state of Indiana.

Amended Dec. 17, 1973, effective Feb. 1, 1974; amended Jan. 2, 1974, effective Feb. 1, 1974; amended effective June 4, 1974; amended Oct. 15, 1986, effective Jan. 1, 1987. amended effective Jan. 26, 1987.

Rule 5. Recording machines: transcripts

Every trial judge exercising criminal jurisdiction of this state shall arrange and provide for the electronic recording or stenographic reporting with computer-aided transcription capability of any and all oral evidence and testimony given in all cases and hearings, including both questions and answers, all rulings of the judge in respect to the admission and rejection of evidence and objections thereto, and any other oral matters occurring during the hearing in any proceeding. The recording device or the computer-aided transcription equipment shall be selected and approved by the court and may be placed under the supervision and operation of the official court reporter or such other person as may be designated by the court. The court may, in its discretion, eliminate shorthand or stenographic reporting of any recorded matter. When computer-aided transcription equipment is used to record oral matters in felony cases, a printed transcript shall be produced and maintained as a court record for fifty-five years. If a transcription of the recorded matters has not been prepared, certified and filed in the criminal proceeding, the electronic recording of all oral matters, together with a log denoting the individuals recorded and meter location of crucial events, or floppy disk and stenographic paper notes, shall be maintained as a confidential court record for ten years in all misdemeanors or fifty-five years in all felony cases.

The judge of the court in which the oral matters were recorded may direct the court reporter or any other responsible, competent person, in his discretion, to make a transcription of recorded oral matters and certify the accuracy of the transcription. Upon certification, the transcription of recorded oral matters shall have the same effect as if made from shorthand or stenographic notes.

Amended Oct. 15, 1986, effective Jan. 1, 1988; amended Nov. 10, 1988, effective Jan. 1, 1989.

Rule 6. Exceptions not necessary; offer to prove

The record need not show exceptions to adverse actions, orders or rulings of the court in order to present alleged errors with respect thereto, for the purposes of a motion to correct errors on an appeal. This rule is not intended to affect in any manner the present practice in regard to objections.

Where, on the examination of a witness, an offer to prove is made, the same may be made either before or after the ruling of the trial court on the objection to the question propounded.

Rule 7. Joint and several

All motions of any kind addressed to two [2] or more paragraphs of any pleading, or filed by two [2] or more parties, shall be taken and construed as joint, separate, and several motions to each of such paragraphs and by each of such parties. All motions containing two [2] or more subject matters shall be taken and construed as separate and several as to each subject matter. All objections to rulings made by two [2] or more parties shall be taken and construed as the joint, separate, and several objections of each of such parties.

All motions containing two [2] or more subject matters should be taken and construed as separate and several as to each subject matter.

Rule 8. Instructions; limitations thereon; objections

- (A) In addition to instructions given by the Court on its own motion, a party in any cause tried by a jury, before argument, shall be entitled to tender in writing not to exceed ten (10) proposed instructions to be given to the jury. However, the trial court, in its discretion, may fix a greater number in a particular case, which number shall be stated of record by an order book entry made by the court. The number of tendered instructions permitted shall not be reduced by any necessary limiting or cautionary instructions, tendered as final instructions, where a limiting or cautionary instruction has been requested during the course of the presentation of evidence. No party shall be entitled to predicate error upon the refusal of a trial court to give any tendered instruction in excess of the number fixed by the court order, whichever is greater. Each tendered instruction shall be confined to one (1) relevant legal principle.
- (B) The court shall indicate on all instructions, in advance of the argument, those that are to be given and those refused. After the court has indicated the instructions to be given, each party shall have a reasonable opportunity to examine such instructions and to state his specific objection to each, out of the presence of the jury and before argument, or specific written objections to each instruction may be submitted to the court before argument. No error with respect to the giving of instructions shall be available as a cause for new trial or on appeal, except upon the specific objections made as above required.
- (C) All instructions given or refused, and all written objections submitted thereto, shall be filed in open court and become a part of the record in the cause without a bill of exceptions. Objections made orally shall be taken by the reporter and may be made a part of the record by a general or a special bill of exceptions.
- (D) Requested instructions must be reduced to writing (identified as to the party making submission), separately numbered, and accompanied by a cover sheet signed by the party, or his attorney, who requests such instructions and will be deemed sufficiently identified as having been tendered by the parties or submitted by the court if it appears in the record from an order book entry, bill of exceptions, or otherwise, by whom the same were tendered or submitted. Where final instructions are submitted to the jury in written form after having been read by the court, no indication of the party or parties by whom instructions were tendered should appear on any instruction.
- (E) The court's action in directing or refusing to direct a verdict shall be shown by order book entry. Error may be predicated upon such ruling or upon the giving or refusing to give a written instruction directing the verdict.
- (F) When the jury has been sworn the court shall instruct in writing as to the issues for trial, the burden of proof, the credibility of witnesses, and the manner of weighing the testimony to be received. Each party shall have reasonable opportunity to examine such instructions and state

his specific objections thereto out of the presence of the jury and before any party has stated his case.

(G) The court may of its own motion and shall, if requested by either party, reread to the jury the instructions given pursuant to subdivision (F) of this rule along with the other instructions given to the jury at the close of the case.

(H) The manner of objecting to such instructions, of saving questions thereon, and making the same a part of the record shall be the same as in Rule 51(C) of the Rules of Trial Procedure.

Amended Nov. 4, 1985, effective Jan. 1, 1986; amended Oct. 29, 1993, effective Jan 1, 1994.

Rule 9. Authority of judges

The judge who presides at the trial of a cause shall, if available, rule on the motion to correct errors if one is filed, and shall sign all bills of exceptions, if such are requested. The unavailability of any such trial judge shall be determined and shown by a court order made by the judge then presiding in such court.

Rule 10. Plea of Guilty: Record to be Made

Whenever a plea of guilty to a felony or misdemeanor charge is accepted from any defendant who is sentenced upon said plea, the judge shall cause the entire proceeding in connection with such plea and sentencing, including questions, answers, statements made by the defendant and his attorney, if any, the prosecuting attorney and the judge to be recorded by an electronic recording device. The court may in its discretion also require the entire proceeding be recorded by the court reporter in shorthand or by stenographic notation.

If a transcription of the recorded matters has not been prepared, certified and filed in the criminal proceeding, the electronic recording of all oral matters, together with a log denoting the individuals recorded and the meter location of crucial events, shall be maintained as a confidential court record for ten years in all misdemeanors or fifty-five years in all felony cases.

Whenever the record of the proceeding is transcribed it shall be prepared in a form similar to that in general use as a transcript of evidence in a trial. When so transcribed, the same shall be submitted to the judge who shall certify that it is a true and complete transcript of such proceedings and shall order the same filed as a part of the record and cause an order book entry of the filing thereof to be made by the clerk.

In any proceeding questioning the validity of such plea of guilty or judgment rendered thereon, such transcription shall be taken and considered as the record of the proceedings transcribed therein and upon appeal the original may be incorporated without copying as a part of the record in such appeal over the certificate of the clerk.

Amended Dec. 23, 1976, effective Jan 1, 1977; amended Oct. 15, 1986, effective Jan. 1, 1988. amended Nov. 10, 1988, effective Jan. 1, 1989.

Rule 10.1. Presence of Prosecutor

Except for the initial hearing where evidence is not presented, the Prosecuting Attorney or a deputy prosecuting attorney shall be present at all felony or misdemeanor proceedings, including the presentation of evidence, sentencing or other final disposition of the case.

Adopted Oct. 15, 1986, effective Jan 1, 1987; amended effective April 28, 1987.

Rule 11. Instructions by Judge After Felony Trial Sentencing

Upon entering a conviction, whether the acceptance of a guilty plea or by finding or by verdict, the court shall sentence a defendant convicted in a criminal case within thirty (30) days of the plea or the finding or verdict of guilty, unless an extension for good cause is shown.

Following the sentence of a defendant convicted of a felony after trial on a plea of not guilty, and following a judgment revoking probation of a defendant found to have violated the terms of his probation after a contested felony probation revocation proceeding, the judge shall immediately advise the defendant as follows:

- (1) that he is entitled to take an appeal or file a motion to correct error;
- (2) that if he wishes to file a motion to correct error, it must be done within thirty (30) days of the sentencing;
- (3) that if he wishes to take an appeal from the judgment, he must file a notice of appeal designating what is to be included in the record on appeal within thirty (30) days of the sentencing or within thirty (30) days after the court's ruling on the motion to correct error, if one is filed; if the notice of appeal is not timely filed, the right to appeal will be forfeited;
- (4) that if he is financially unable to employ an attorney, the court will appoint counsel for defendant at public expense for the purpose of filing the motion to correct error and for taking an appeal.

Provided further that when a trial court imposes a death sentence, it shall also advise the defendant at sentencing that the court reporter and clerk will begin immediate preparation of the record on appeal.

The court shall then inquire of the defendant whether or not he wishes to appeal or file a Motion to Correct Error. If the defendant states that he does desire to do so, the court shall forthwith instruct trial counsel for defendant that it is his duty to consult with defendant and with defendant's appeal counsel, if any, on the action to be taken.

The court shall then inquire of the defendant whether or not he is a pauper and has insufficient funds to employ an attorney. If the court finds that he is financially unable to employ counsel for an appeal and the defendant states that he desires an attorney for appeal, the court shall thereupon promptly appoint an attorney to represent the defendant in an appeal and notify the defendant at said time of said action.

The judge shall cause the court reporter to record the entire proceedings in connection with such sentencing or probation revocation, including questions, answers, statements made by the defendant and his attorney, if any, the prosecuting attorney and the judge, and promptly thereafter to transcribe the same in form similar to that in general use as a transcript of evidence in a trial.

Thereafter in any subsequent inquiry into the events occurring at these proceedings, such transcript shall be considered as part of the record on appeal. When properly certified by the clerk, such transcript or a copy thereof may be incorporated as a part of the record in any appeal.

Amended Nov. 30, 1971, effective April 1, 1972; amended effective April 30, 1973; amended Nov. 4, 1985, effective Jan. 1, 1986. amended Nov. 10, 1988, effective Jan. 1, 1989. amended effective Feb. 16, 1989. amended Nov. 30, 1989, effective Jan. 1, 1990. amended Feb. 4, 2000, effective Jan. 1, 2001.

Rule 12. Change of venue in criminal cases

- (A) **Change of Venue from the County.** In criminal actions and proceedings to enforce a statute defining an infraction, a motion for change of venue from the county shall be verified or accompanied by an affidavit signed by the criminal defendant or the prosecuting attorney

setting forth facts in support of the constitutional or statutory basis or bases for the change. Any opposing party shall have the right to file counter-affidavits within ten (10) days, and after a hearing on the motion, the ruling of the court may be reviewed only for abuse of discretion.

- (B) **Change of Judge - Felony and Misdemeanor Cases.** In felony and misdemeanor cases, the state or defendant may request a change of judge for bias or prejudice. The party shall timely file an affidavit that the judge has a personal bias or prejudice against the state or defendant. The affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists, and shall be accompanied by a certificate from the attorney of record that the attorney in good faith believes that the historical facts recited in the affidavit are true. The request shall be granted if the historical facts recited in the affidavit support a rational inference of bias or prejudice.
- (C) **Change of Judge - Infractions and Ordinance Violations.** In proceedings to enforce a statute defining an infraction and in cases involving the prosecution of ordinance violations, a motion for change of judge shall be verified or accompanied by an affidavit signed by the criminal defendant or prosecuting attorney setting forth facts in support of cause for such change of judge. Any opposing party shall have the right to file counter-affidavits within ten (10) days. The decision of the court in such matters shall be reviewed only for abuse of discretion. In the event a motion for change of judge is granted under this provision, the procedure for reassignment of the case as set forth in Criminal Rule 13 shall apply.
- (D) **Time Period for Filing Request for Change of Judge or Change of Venue.** In any criminal action, no change of judge or change of venue from the county shall be granted except within the time herein provided.
 - (1) *Ten Day Rule.* An application for a change of judge or change of venue from the county shall be filed within ten (10) days after a plea of not guilty, or if a date less than ten (10) days from the date of said plea, the case is set for trial, the application shall be filed within five (5) days after setting the case for trial. Provided, that where a cause is remanded for a new trial by the Supreme Court or Court of Appeals, such application must be filed not later than ten (10) days after the party has knowledge that the cause is ready to be set for trial.
 - (2) *Subsequently Discovered Grounds.* If the applicant first obtains knowledge of the cause for change of venue from the judge or from the county after the time above limited, the applicant may file the application, which shall be verified by the party specifically alleging when the cause was first discovered, how it was discovered, the facts showing the cause for a change, and why such cause could not have been discovered before by the exercise of due diligence. Any opposing party shall have the right to file counter-affidavits on such issue within ten (10) days, and after a hearing on the motion, the ruling of the court may be reviewed only for abuse of discretion.
- (E) **Pleadings and Papers.** All pleadings, papers and affidavits filed at any hearing held pursuant to this rule shall become a part of the record without further action upon the part of either party.
- (F) **Reassignment of Case or Selection of Special Judge.** Whenever in a criminal action an application for a change of judge has been timely filed and granted, the case shall be reassigned or a special judge shall be selected in accordance with Ind.Crim. Rule 13.
- (G) **Procedure for Change of Venue from County.**
 - (1) Whenever a change of venue from the county is granted, if the parties to such action shall agree in open court, within three (3) days from the granting of the motion or affidavit for the change of venue, upon the county to which the change of venue shall be changed, it shall be the duty of the court to transfer such action to such county. In the absence of such agreement, it shall be the duty of the court within two (2) days thereafter to submit to the

parties a written list of all the counties adjoining the county from which the venue is changed; provided, however, if it appears to the regular judge or the presiding judge before whom an application for a change of venue from the county is pending that the grounds for such change also exist in one or more of the adjoining counties to which the case may be venued, such judge shall have the right to eliminate such county or counties from the list of counties to be submitted for striking and to substitute another county or counties where such grounds, in his opinion, do not exist in order that the defendant shall have a fair and impartial trial.

(2) The parties within seven (7) days thereafter, or within such time, not to exceed fourteen (14) days, as the court shall fix, shall each alternately strike off the name of such counties. The party first filing such motion shall strike first, and the action shall be sent to the county remaining not stricken under such procedure. If a moving party fails to so strike within said time, such party shall not be entitled to a change of venue, and the court shall resume general jurisdiction of the cause. If a non-moving party fails to strike off the names of such counties within the time limited, then the clerk shall strike off such names for such party.

(3) Whenever a court has granted an order for a change of venue to another county and the costs thereof have been paid where an obligation exists to pay such costs for such change, either party to the cause may file a certified copy of the order making such change in the court to which such change has been made, and thereupon such court shall have full jurisdiction of said cause, regardless of the fact that the transcript and papers have not yet been filed with such court to which such change is taken. Nothing in this rule shall be construed as divesting the original court of its jurisdiction to hear and determine emergency matters between the time that a motion for change of venue to another county is filed and the time that the court grants an order for the change of venue.

(4) Notwithstanding any provision of these rules or the Indiana Rules of Trial Procedure to the contrary, whenever a court has granted an order for a change of venue to another county, the judge granting the change of venue may be appointed as special judge for that cause in the receiving county if the judge granting the change, the receiving judge, and all of the parties to the cause agree to such appointment.

Amended effective July 1, 1981; amended Dec. 18, 1984, effective Jan. 1, 1985; amended Oct. 29, 1993, effective Jan. 1, 1994; amended Dec. 5, 1994, effective Feb. 1, 1995; amended Dec. 15, 1995, effective Feb. 1, 1996 Amended Dec 21, 2001, effective April 1, 2002.

Rule 13. Case reassignment and special judges; selection

(A) **Application of Rule.** This rule shall apply to the reassignment of the case and the selection of special judges in felony and misdemeanor cases where a change of judge is granted pursuant to Ind. Crim. Rule 12(B) or an order of disqualification or recusal is entered in the case. The reassignment procedure set forth in this rule also shall apply where a change of judge is granted pursuant to Ind. Post-Conviction Remedy Rule 1(4)(b) and in proceedings to enforce a statute defining an infraction and ordinance violation cases where a change of judge is granted for cause pursuant to Crim.R. 12(C).

(B) **Duty to Notify Court.** It shall be the duty of the parties to promptly advise the court of an application or motion for change of judge.

(C) **Selection under Local Rule Adopted by Counties.** In counties where four (4) or more judges receive assignment of felony or misdemeanor cases under Ind.Crim.Rule 2.2, upon the

granting of a change of judge, a successor judge shall be assigned in the same manner as the initial judge. In counties where there are fewer than four (4) judges, the local rule required by Ind.Crim.Rule 2.2 shall include an alternative assignment list with judges of contiguous counties and senior judges assigned to the court for use in the event a change of judge is granted. Except for those serving pursuant to Criminal Rule 12(G)(4), judges previously assigned to the case are ineligible for reassignment.

- (D) **Appointment by Indiana Supreme Court.** A trial court may request the Indiana Supreme Court appoint a special judge in the following circumstances:
- (1) No judge under the local rule is available for appointment; or
 - (2) The particular circumstance warrants selection of a special judge by the Indiana Supreme Court.
- (E) **Qualification and Oath.** A judge assigned under the provision of this rule shall accept jurisdiction unless disqualified under the *Code of Judicial Conduct* or excused from service by the Indiana Supreme Court. The reassignment of a case or assignment of a special judge shall be entered in the Chronological Case Summary of the case. An oath or special order accepting jurisdiction is not required.
- (F) **Discontinuance of Service.** In the event the case has been reassigned or a special judge assumes jurisdiction and thereafter ceases to act for any reason, further reassignment or the selection of a successor special judge shall be in the same manner as set forth in subsection (C) above.
- (G) **Compensation.** A full-time judge, magistrate, or other employee of the judiciary shall not be paid a special judge fee for serving as a special judge or serving in a case reassigned pursuant to this rule. All other persons serving as special judge shall be paid a special judge fee of twenty-five dollars (\$25.00) per day for each jurisdiction served for the entry of judgments and orders and hearings incidental to such entries. All judges, magistrates, and other persons who serve in courts outside of their county of residence shall be entitled to mileage at a rate equal to other public officials as established by state law, hotel accommodations, and reimbursement for meals and other expenses. Senior Judges who serve as special judges shall be paid in accordance with a schedule published by the Executive Director of the division of State Court Administration. At the discretion of the special judge and following consultation with the parties, a special judge or a judge reassigned a case in another court may schedule conferences, entertain motions, and perform all administrative tasks without travel to the court where the case is pending. All hearings involving testimony by witnesses, unless the parties agree to the contrary on record, shall be held in the court where the case is assigned. Special judges are encouraged to employ procedures that reduce the necessity for travel, such as telephone conferences, facsimile exchange of information, and other time-saving measures of communication. Compensation as permitted under this provision shall be paid by the State upon presentation of a claim for such services signed by the special judge.
- (H) **Continuation of Jurisdiction.** A special judge appointed by the Indiana Supreme Court retains jurisdiction of the case for all future proceedings unless:
- (1) a specific statute or rule provides to the contrary; or
 - (2) the judge is unavailable by reason of death, sickness, absence, or unwillingness to serve.

Amended effective Jan. 27, 1970; amended effective Feb. 15, 1971; amended April 9, 1974, effective June 1, 1974; amended Nov. 13, 1979, effective Jan. 1, 1980; amended Nov. 3, 1981, effective Jan. 1, 1982. amended Nov. 16, 1984, effective Jan. 1, 1985. amended effective May 9, 1987. amended Oct. 29, 1993, effective Jan. 1, 1994. amended Dec. 5, 1994, effective July 1, 1995; amended effective July 6, 1995. amended effective July 24, 1995. amended Dec. 15, 1995, effective Feb. 1, 1996. Amended Dec. 21, 2001, effective April 1, 2002.

Rule 14. Judges pro tempore; appointment

When it shall be made to appear to the Supreme Court of Indiana by satisfactory proof that the judge of any court having criminal jurisdiction is unable because of physical or mental infirmity to perform the duties of his office, and no judge pro tempore has been legally appointed to perform and is performing such duties, the Supreme Court of the state may appoint a judge pro tempore to serve as sole judge of said court for the duration of such infirmity.

The judge so appointed shall be an attorney in good standing in the state of Indiana.

Provided further that when it shall be made to appear to the Supreme Court of Indiana by verified petition supported by affidavit that any judge of any court having criminal jurisdiction fails, refuses, or neglects to perform the duties of his office without good cause, the court shall issue an order to any such judge requiring him to proceed to perform the duties of his office and shall fix a date for said judge to appear and show cause why he has failed to perform such duties, or in the alternative to show cause why a judge or judges pro tempore or commissioner shall not be appointed to complete the performance of the duties of the judge of any such court under order and direction from the Supreme Court of Indiana. In all cases hereunder at least ten [10] days' prior notice, with a copy of such petition, shall be given to the judge concerned that such petition will be presented to the court upon a date named.

Rule 15. Time limitation for ruling; time limitation for holding issue under advisement

The time limitation for ruling and decision set forth under Trial Rules 53.1, 53.2 and 53.3 shall apply in criminal proceedings.

Amended Nov. 1, 1982, effective Jan. 1, 1983.

Rule 15.1. Entry of Judgment

Subject to the provisions set forth by statute, upon a verdict of a jury, or upon a decision of the court, the court shall promptly prepare and sign the judgment, and the clerk shall thereupon enter the judgment in the Record of Judgments and Orders and note the entry of the judgment in the Chronological Case Summary. Attorneys shall not submit forms of judgment except upon direction of the court, and these directions shall not be given as a matter of course. The judge, failing promptly to cause the judgment to be prepared, signed, and entered as provided herein, may be compelled to do so by mandate. The provisions of Trial Rule 58(B) relating to the content of a judgment shall not apply in criminal proceedings.

Adopted Nov. 13, 1989, effective permissive prior to Jan. 1, 1991 and mandatory Jan. 1, 1991.

Rule 16. Motion to Correct Error; Filing with Judge or Clerk

Motion to Correct Error within thirty (30) days of sentencing.

(A) **When Mandatory.** A Motion to Correct Error is not a prerequisite for appeal, except when a party seeks to address newly discovered material evidence, including alleged jury misconduct, capable of production within thirty (30) days of final judgment which, with reasonable diligence, could not have been discovered and produced at trial.

All other issues and grounds for appeal appropriately preserved during trial may be initially addressed in the appellate brief.

(B) **Time for Filing with Judge or Clerk.** It shall be deemed sufficient filing of a motion to correct error within thirty (30) days following the date of sentencing in a cause if said motion is filed with the judge having jurisdiction of the cause, who shall immediately make an entry showing the filing thereof, or if said judge is not available for the presentation and the entry of said motion, then said motion to correct error shall be filed with the clerk of the court in which said cause is pending, and the clerk shall immediately thereupon note the filing of said motion to correct error on the court's Chronological Case Summary in the cause, and the clerk shall thereafter call said filing of said motion to correct error to the attention of the judge in

the case at the first opportunity. Trial Rule 59 (Motion to Correct Error) will apply to criminal proceedings insofar as applicable and when not in conflict with any specific rule adopted by the Indiana Supreme Court for the conduct of criminal procedure.

Amended and effective Feb. 16, 1989; subsec. (B) amended Nov. 13, 1989, effective permissive prior to Jan. 1, 1991 and mandatory Jan. 1, 1991.

Rule 17. Affidavits on motion to correct errors; notice; counter-affidavits

When a motion to correct errors is supported by affidavits, notice of the filing thereof shall be served upon the opposing party, or his attorneys of record, within ten [10] days after the filing thereof, and the opposing party shall have twenty [20] days after such service to file counter-affidavits; reply affidavits may be filed within ten [10] days after filing of counter-affidavits, which periods may be extended within the discretion of the court for good cause shown. Such affidavits shall be considered as evidence without the introduction thereof on the hearing on the motion, and shall be a part of the record without a bill of exceptions. If, besides the affidavits, additional evidence is received, the trial court shall cause the court reporter to record all such evidence, and when so transcribed, the same shall be submitted to the judge, who shall certify that it is a true and complete transcript of such evidence, and the same shall be filed with the court and be a part of the record on appeal without being incorporated into any bill of exceptions.

Rule 18. Service of Pleadings, Motions and Briefs

Unless the court, on motion or of its own initiative orders otherwise, a copy of every pleading and motion, and every brief submitted to the trial court, except trial briefs, shall be served personally or by mail on or before the day of the filing thereof upon each attorney or firm of attorneys appearing of record for each adverse party. Handing a copy to an attorney or leaving it at the attorney's office with the clerk or other person in charge thereof shall be considered as personal service.

It shall be the duty of attorneys when entering their appearance in a cause or when filing pleadings or papers therein, to have noted on the Chronological Case Summary or on said pleadings or papers so filed, their mailing address, and service by mail at such address shall be deemed sufficient.

Amended Nov. 13, 1989, effective permissive prior to Jan. 1, 1991 and mandatory Jan. 1, 1991.

Rule 19. Time Within Which the Appeal Must be Submitted

The notice of appeal designating what is to be included in the record on appeal must be filed within thirty (30) days of the sentencing or within thirty (30) days of the ruling on the motion to correct error, if one is filed. The time for filing other documents is governed by the Rules of Appellate Procedure. Unless filings are made within these time limits the right to appeal will be forfeited.

Amended Nov. 30, 1971, effective April 1, 1972; amended Nov. 10, 1988, effective Jan. 1, 1989. amended effective Feb. 16, 1989. amended Nov. 30, 1989, effective Jan. 1, 1990. amended Feb. 4, 2000, effective Jan. 1, 2001.

Rule 20. Extensions of time

Petitions for an extension of time in criminal cases shall contain a concise statement of the status of the case including information as to whether the defendant has been released on bond, whether he is incarcerated and if incarcerated, the name of the institution.

Amended Feb. 4, 2000, effective Jan. 1, 2001.

Rule 21. Application of trial and appellate rules

The Indiana rules of trial and appellate procedure shall apply to all criminal proceedings so far as they are not in conflict with any specific rule adopted by this court for the conduct of criminal proceedings.

Amended Dec. 23, 1996, effective March 1, 1997.

Rule 22. Trial by Jury in Misdemeanor Cases: Demand: Notice: Waiver

A defendant charged with a misdemeanor may demand trial by jury by filing a written demand therefor not later than ten (10) days before his first scheduled trial date. The failure of a defendant to demand a trial by jury as required by this rule shall constitute a waiver by him of trial by jury unless the defendant has not had at least fifteen (15) days advance notice of his scheduled trial date and of the consequences of his failure to demand a trial by jury.

The trial court shall not grant a demand for a trial by jury filed after the time fixed has elapsed except upon the written agreement of the state and defendant, which agreement shall be filed with the court and made a part of the record. If such agreement is filed, then the trial court may, in its discretion, grant a trial by jury.

Adopted Nov. 21, 1980, effective Jan 1, 1981; amended Nov. 10, 1988, effective Jan. 1, 1989.

Rule 23. Method of Keeping Records

Under the direction of the Supreme Court of Indiana, the Clerk of the Circuit Court may, notwithstanding the recordkeeping practices set forth for criminal proceedings, keep records in any suitable media. The recordkeeping formats and systems and the quality and permanency requirements employed for the Chronological Case Summary, the Case File, and the Record of Judgments and Orders (Order Book) shall be approved by the Division of State Court Administration for compliance with applicable requirements.

Adopted Nov. 13, 1989, effective permissive prior to Jan. 1, 1991 and mandatory Jan. 1, 1991.

Rule 24. Capital Cases

(A) **Supreme Court Cause Number.** Whenever a prosecuting attorney seeks the death sentence by filing a request pursuant to Ind. Code § 35-50-2-9, the prosecuting attorney shall file that request with the trial court and with the Court Administrator, Indiana Supreme Court, 315 State House, Indianapolis, Indiana 46204. Upon receipt of same, the Court Administrator shall open a cause number in the Supreme Court and notify counsel.

(B) **Appointment of Qualified Trial Counsel.** Upon a finding of indigence, it shall be the duty of the judge presiding in a capital case to enter a written order specifically naming two (2) qualified attorneys to represent an individual in a trial proceeding where a death sentence is sought. The provisions for the appointment of counsel set forth in this section do not apply in cases wherein counsel is employed at the expense of the defendant.

(1) *Lead Counsel; Qualifications.* One (1) of the attorneys appointed by the court shall be designated as lead counsel. To be eligible to serve as lead counsel, an attorney shall:

- (a) be an experienced and active trial practitioner with at least five (5) years of criminal litigation experience;
- (b) have prior experience as lead or co-counsel in no fewer than five (5) felony jury trials which were tried to completion;
- (c) have prior experience as lead or co-counsel in at least one (1) case in which the death penalty was sought; and

- (d) have completed within two (2) years prior to appointment at least twelve (12) hours of training in the defense of capital cases in a course approved by the Indiana Public Defender Commission.
- (2) *Co-Counsel, Qualifications.* The remaining attorney shall be designated as co-counsel. To be eligible to serve as co-counsel, an attorney shall:
 - (a) be an experienced and active trial practitioner with at least three (3) years of criminal litigation experience;
 - (b) have prior experience as lead or co-counsel in no fewer than three (3) felony jury trials which were tried to completion; and
 - (c) have completed within two (2) years prior to appointment at least twelve (12) hours of training in the defense of capital cases in a course approved by the Indiana Public Defender Commission.
- (3) *Workload of Appointed and Salaried Capital Counsel.* In the appointment of counsel, the nature and volume of the workload of appointed counsel must be considered to assure that counsel can direct sufficient attention to the defense of a capital case.
 - (a) Attorneys accepting appointments pursuant to this rule shall provide each client with quality representation in accordance with constitutional and professional standards. Appointed counsel shall not accept workloads which, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations.
 - (b) A judge shall not make an appointment of counsel in a capital case without assessing the impact of the appointment on the attorney's workload.
 - (c) Salaried or contractual public defenders may be appointed as trial counsel in a capital case, if:
 - (i) the public defender's caseload will not exceed twenty (20) open felony cases while the capital case is pending in the trial court;
 - (ii) no new cases will be assigned to the public defender within thirty (30) days of the trial setting in the capital case;
 - (iii) none of the public defender's cases will be set for trial within fifteen (15) days of the trial setting in the capital case; and
 - (iv) compensation is provided as specified in paragraph (C).
 - (d) The workload of full-time salaried capital public defenders will be limited consistent with subsection (B)(3)(a) of this rule. The head of the local public defender agency or office, or in the event there is not agency or office, the trial judge shall not make an appointment of a full-time capital public defender in a capital case without assessing the impact of the appointment on the attorney's workload. In assessing an attorney's workload, the head of the local public defender agency or office, or in the event there is no agency or office the trial judge shall be guided by Standard J of the Standards of Indigent Defense Services in Non-Capital cases as adopted by the Indiana Public Defender Commission, effective January 1, 1995, and shall treat each capital case as the equivalent of forty (40) felonies under the Commission's "all felonies" category. Appointment of counsel shall also be subject to subsections (B)(3)(c)(ii), (iii) and (iv) of this rule.
- (C) **Compensation of Appointed Trial Counsel.** All hourly rate trial defense counsel appointed in a capital case shall be compensated under subsection (1) of this provision upon presentment and approval of a claim for services detailing the date, activity, and time duration for which compensation is sought. Hourly rate counsel shall submit periodic billings not less than once every thirty (30) days after the date of appointment by the trial court. All salaried capital public defenders compensated under subsection (4) of this provision shall present a monthly report detailing the date, activity, and time duration of services rendered after the date of appointment. Periodic payment during the course of counsel's representation shall be made.

- (1) *Hours and Hourly Rate.* Defense counsel appointed at an hourly rate in capital cases filed or remanded after appeal on or after January 1, 2001, shall be compensated for time and services performed at the hourly rate of ninety dollars (\$90.00) only for that time and those services determined by the trial judge to be reasonable and necessary for the defense of the defendant. The trial judge's determination shall be made within thirty (30) days after submission of billings by counsel. Counsel may seek advance authorization from the trial judge, ex parte, for specific activities or expenditures of counsel's time.

The hourly rate set forth in this rule shall be subject to review and adjustment on a biennial basis by the Executive Director of the Division of State Court Administration. Beginning July 1, 2002, and July 1st of each even year thereafter, the Executive Director shall announce the hourly rate for defense counsel appointed in capital cases filed or remanded after appeal on or after January 1, of the years following the announcement. The hourly rate will be calculated using the Gross Domestic Product Implicit Price Deflator, as announced by the United States Department of Commerce in its May report, for the last two years ending December 31st preceding the announcement. The calculation by the Executive Director shall be rounded to the next closest whole dollar.

In the event the appointing judge determines that the rate of compensation is not representative of practice in the community, the appointing judge may request the Executive Director of the Division of State Court Administration to authorize payment of a different hourly rate of compensation in a specific case.

- (2) *Support Services and Incidental Expenses.* Counsel appointed at an hourly rate in a capital case shall be provided, upon an ex parte showing to the trial court of reasonableness and necessity, with adequate funds for investigative, expert, and other services necessary to prepare and present an adequate defense at every stage of the proceeding, including the sentencing phase. IN addition to the hourly rate provided in this rule, all counsel shall be reimbursed for reasonable and necessary incidental expenses approved by the trial judge. Counsel may seek advance authorization from the trial judge, ex parte, for specific incidental expenses.

Full-time salaried capital public defenders shall be provided with adequate funds for investigative, expert, and other services necessary to prepare and present an adequate defense at every stage of the proceeding, including the sentencing phase, as determined by the head of the local public defender agency or office, or in the event there is no agency or office, by the trial judge as set forth above.

- (3) *Contract Employees.* In the event counsel is generally employed by the court of appointment to perform other defense services, the rate of compensation set for such other defense services may be adjusted during the pendency of the death penalty case to reflect the limitations of case assignment established by this rule.
- (4) *Salaried Capital Public Defenders.* In those counties having adopted a comprehensive Plan as set forth in I.C. 33-9-15 *et. seq.*, which has been approved by the Indiana Public Defender Commission, and who are in compliance with Commission standards authorized by I.C. 33-9-13-3(2), a full-time salaried capital public defender meeting the requirements of this rule may be assigned in a capital case by the head of the local public defender agency or office, or in the event there is no agency or office, by the trial judge. Salaried capital public defenders may be designated as either lead counsel or co-counsel. Salaried capital lead counsel and co-counsel must be paid salary and benefits equivalent to the average of the salary and benefits paid to lead prosecuting attorneys and prosecuting attorneys serving as co-counsel, respectively, assigned to capital cases in the county.

Each year, by July 1, those counties wishing to utilize full-time salaried capital public defenders for capital cases shall submit to the Executive Director of the Division of State Court Administration the salary and benefits proposed to be paid the capital

public defenders for the upcoming year along with the salaries and benefits paid to lead prosecutors and prosecutors serving as co-counsel assigned capital cases in the county in the thirty-six (36) months prior to July 1, or a certification that no such prosecutor assignments were made. The Executive Director shall verify and confirm to the Indiana Public Defender Commission and the requesting county that the proposed salary and benefits are in compliance with this rule. In the event a county determines that the rate of compensation set forth herein is not representative of practice in the community, the county may request the Executive Director to authorize a different salary for a specific year.

- (D) **Transcription of Capital Cases.** The trial or post-conviction court in which a capital case is pending shall provide for stenographic reporting with computer-aided transcription of any and all oral testimony, argument, or other matters required to be reported under Criminal Rule 5.
- (E) **Imposition of Sentence.** Whenever a court sentences a defendant to death, the court shall pronounce said sentence and issue its order to the Department of Correction for the defendant to be held in an appropriate facility. A copy of the order of conviction, order sentencing the defendant to death, and order committing the death-sentence inmate to the Department of Correction shall be forwarded by the court imposing sentence to the Indiana Supreme Court Administrator's Office. When a trial court imposes a death sentence, it shall, on the same day sentence is imposed, order the court reporter and clerk to begin immediate preparation of the record on appeal.
- (F) **Setting of Initial Execution Date - Notice.** In the sentencing order, the trial court shall set an execution date one (1) year from the date of judgment of conviction. Copies of said order shall be sent by the trial court to:
- (i) the prosecuting attorney of record;
 - (ii) the defendant;
 - (iii) the defendant's attorney of record;
 - (iv) the appellate counsel, if such has been appointed;
 - (v) the Attorney General;
 - (vi) the Commissioner of the Department of Correction;
 - (vii) the Warden of the institution where the defendant is confined; and
 - (viii) the State Public Defender.

Contemporaneously with the service of the order setting the date of execution to the parties listed in this section, the trial court shall forward to the Supreme Court Administrator's Office a copy of the order, with a certification by the clerk of the court that the parties listed in this section were served a copy of the order setting the date of execution.

- (G) **Stay of Execution Date.** This section governs the stay of execution for defendants sentenced to death.
- (1) *Stay of Execution - General.* The Supreme Court shall have exclusive jurisdiction to stay the execution of a death sentence. In the event the Supreme Court stays the execution of a death sentence, the Supreme Court shall order the new execution date when the stay is lifted. A copy of an order to stay an execution or set a new date for execution will be sent to the persons set forth in section (F) of this rule.
 - (2) *Stay of Initial Execution Date.* Upon petition or on its own motion, the Supreme Court shall stay the initial execution date set by the trial court. On the thirtieth (30th) day following completion of rehearing, the Supreme Court shall enter an order setting an execution date, unless counsel has appeared and requested a stay in accordance with section (H) of this rule. A copy of any order entered under this provision will be sent to the persons set forth in section (F) of this rule.

- (H) **Post-Conviction Relief - Stay - Duty of Counsel.** Within thirty (30) days following completion of rehearing, private counsel retained by the inmate or the State Public Defender (by deputy or by special assistant in the event of a conflict of interest) shall enter an appearance in the trial court, advise the trial court of the intent to petition for post-conviction relief, and request the Supreme Court to extend the stay of execution of the death sentence. A copy of said appearance and notice of intent to file a petition for post-conviction relief shall be served by counsel on the Supreme Court Administrator. When the request to extend the stay is received, the Supreme Court will direct the trial court to submit a case management schedule consistent with Ind. Code § 35-50-2-9(i) for approval. On the thirtieth (30th) day following completion of any appellate review of the decision in the post-conviction proceeding, the Supreme Court shall enter an order setting the execution date. It shall be the duty of counsel of record to provide notice to the Supreme Court Administrator of any action filed with or decision rendered by a federal court that relate to defendants sentenced to death by a court in Indiana.
- (I) **Initiation of Appeal.** When a trial court imposes a death sentence, it shall on the same day sentence is imposed order the court reporter and clerk to begin immediate preparation of the record on appeal.
- (J) **Appointment of Appellate Counsel.** Upon a finding of indigence, the trial court imposing a sentence of death shall immediately enter a written order specifically naming counsel under this provision for appeal. If qualified to serve as appellate counsel under this rule, trial counsel shall be appointed as sole or co-counsel for appeal.
- (1) *Qualifications of Appellate Counsel.* An attorney appointed to serve as appellate counsel for an individual sentenced to die, shall:
- (a) be an experienced and active trial or appellate practitioner with at least three (3) years experience in criminal litigation;
 - (b) have prior experience within the last five (5) years as appellate counsel in no fewer than three (3) felony convictions in federal or state court; and
 - (c) have completed within two (2) years prior to appointment at least twelve (12) hours of training in the defense of capital cases in a course approved by the Indiana Public Defender Commission.
- (2) *Workload of Appointed Appellate Counsel.* In the appointment of Appellate Counsel, the judge shall assess the nature and volume of the workload of appointed appellate counsel to assure that counsel can direct sufficient attention to the appeal of the capital case. In the event the appointed appellate counsel is under a contract to perform other defense or appellate services for the court of appointment, no new cases for appeal shall be assigned to such counsel until the Appellant's Brief in the death penalty case is filed.
- (K) **Compensation of Appellate Counsel.** Appellate counsel appointed to represent an individual sentenced to die shall be compensated under this provision upon presentment and approval of a claim for services detailing the date, activity, and time duration for which compensation is sought. Counsel shall submit periodic billings not less than once every thirty (30) days after the date of appointment. Attorneys employed by appellate counsel for consultation shall be compensated at the same rate as appellate counsel.
- (1) **Hours and Hourly rate.** Appellate defense counsel appointed on or after January 1, 2001, to represent an individual sentenced to die shall be compensated for time and services performed at the hourly rate of ninety dollars upon only for that time and those services determined by the trial judge to be reasonable and necessary for the defense of the defendant. The trial judge's determination shall be made within thirty (30) days after submission of billings by counsel. Counsel may seek advance authorization from the trial judge, ex parte, for specific activities or expenditures of counsel's time.
- The hourly rate set forth above shall be subject to review and adjustment as set forth in section (C)(1) of this rule.

In the event the appointing judge determines that this rate of compensation is not representative of practice in the community, the appointing judge may request the Executive Director of the Division of State Court Administration to authorize payment of a different hourly rate of compensation in a specific case.

- (2) *Contract Employees*. In the event appointed appellate counsel is generally employed by the court of appointment to perform other defense services, the rate of compensation set for such other defense services may be adjusted during the pendency of the death penalty appeal to reflect the limitations of case assignment established by this rule.
- (3) *Salaried Capital Public Defenders*. In the event appointed appellate counsel is a salaried capital public defender, as described in section (C)(4) of this rule, the county must comply with, and counsel shall be compensated according to, the requirements of section (C)(4).
- (4) *Incidental Expenses*. In addition to the hourly rate or salary provided in this rule, appellate counsel shall be reimbursed for reasonable incidental expenses as approved by the court of appointment.
- (L) **Briefing on Appeal**. In capital cases, counsel may place the verbatim judgment of the trial court and verbatim instructions and the verbatim objections thereto required by Appellate Rule 50B in an Addendum to Brief, and these documents shall not count against the word limit of the brief.

Adopted Nov. 30, 1989, effective Jan. 1, 1990; amended Oct. 21, 1991, effective Jan. 1, 1992; amended Jan. 22, 1993, effective Feb. 1, 1993; amended effective March 28, 1996. amended Feb. 4, 2000, effective Jan. 1, 2001.; amended Dec. 22, 2000, effective Jan. 1, 2001; amended effective March 5, 2001.,

Rule 25. Wiretap

- (A) **Review of Decision to Permit Wiretap**. A review by the Indiana Court of Appeals of a decision to permit interception (wiretap) of telephonic or telegraphic communications pursuant to IC 35-33.5-1-1 et seq., shall be available as this rule provides, notwithstanding any provision in the Rules of Appellate Procedure to the contrary.
- (B) **Issuance of Warrant - Ex Parte Review - Stay**. Where a circuit or superior court issues a warrant for a wiretap, the prosecuting attorney shall file a petition for review of the warrant for wiretap with the Court of Appeals within ten (10) days of the issuance of the warrant by the circuit or superior court. The petition for review shall be accompanied by a certified record which contains the application for warrant and accompanying documents filed in the circuit or superior court together with the warrant and an electronic transcription (tape) of the hearing on the necessity to issue the warrant. Implementation of a warrant shall be stayed pending approval of its issuance by the Indiana Court of Appeals.
- (C) **Notification of the Court of Appeals**. On the day a warrant is issued, the prosecuting attorney who obtains a warrant shall notify the Chief Judge of the Court of Appeals by telephone that a warrant has been issued and when the documents will be tendered for review.
- (D) **Secrecy of Application and Review**. Initially the public shall not be permitted to view any documents filed in a circuit or superior court in connection with an application for issuance of a wiretap warrant, nor shall the public be permitted to attend any hearing in connection with the application. In addition, the public shall not be permitted to view any documents filed in connection with the review of the issuance of a wiretap warrant filed in the Indiana Court of Appeals, nor shall the public be permitted to attend any hearing conducted in the Indiana Court of Appeals. Court personnel, and personnel from the clerks' offices at the trial and appellate level shall not disclose the pendency of an action under this rule. The records from a warrant application, the issuance of a warrant, and the review of a warrant shall only

become public record upon the date a warrant or an extended warrant terminates pursuant to statute.

- (E) **Report.** Within twenty-eight (28) days after the termination of a warrant or an extension, or the denial of an application for a warrant or an extension, the court to which application for the warrant or an extension was made shall submit a report to the executive director of the division of court administration in accordance with I.C. 35-33.5-2-5.

Adopted Nov. 27, 1990, effective Jan. 1, 1991.

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